

**Before the  
Federal Communications Commission  
Washington, D.C. 20554**

In the Matter of

Joint Application by BellSouth Corporation,	)	
BellSouth Telecommunications, Inc. and	)	
BellSouth Long Distance for Provision of	)	CC Docket No. 02-35
In-Region, InterLATA Services in	)	
Georgia and Louisiana	)	

**REPLY COMMENTS OF  
MPOWER COMMUNICATIONS CORP.  
ON BELLSOUTH APPLICATION  
FOR 271 AUTHORITY**

MPOWER COMMUNICATIONS CORP.

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### **Summary**

Mpower outlined numerous outstanding issues with BellSouth in Mpower's Initial Comments in this docket. In response to a BellSouth Ex Parte, filed in response to questions by Common Carrier Bureau representatives, in these Reply Comments Mpower explains its experience with recent improper BellSouth "win-back" methods.

More specifically, BellSouth's wholesale services section refuses to complete corrections to OSS entries which allegedly must be rectified prior to the transfer of service to a CLEC and requires the CLEC customer or prospective customer to call BellSouth's retail services section to attempt to get the errors corrected. When the CLEC customer calls BellSouth's retail services section, they are subjected to aggressive retention or "win-back" efforts. Further, the customer is frequently required to call more than once and even then, the problem often is not corrected.

As indicated in detail below, this is a clear violation of 47 USC 222(b), as well as of the Commission's interpretations of this section. Further, it does not meet the requirements for "independently" obtaining information from retail operations regarding a proposed customer switch to a CLEC and should be halted.

In addition, Mpower has outlined its continuing requests for a billing assurance program, as provided for in its interconnection agreement, and BellSouth's failure to make progress on the development and implementation of such a billing assurance program. Such a program is much needed to eliminate BellSouth's long-standing failure to provide accurate and timely wholesale bills.

As a result of the many on-going issues referenced in Mpower's initial comments and the issues which are outlined in these Reply Comments, Mpower believes BellSouth should not be granted 271 authority in Georgia, at this time.

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FOR 271 AUTHORITY**

Mpower Communications Corp. ("Mpower") hereby submits its Reply Comments on the issues raised before the Federal Communications Commission ("Commission" or "FCC") by the BellSouth Application of February 14, 2002, for 271 authority.

**I. Introduction**

In BellSouth's previous filing for 271 authority, Docket No. 01-277, on October 22, 2001, Mpower commented jointly with Network Plus, Inc. and Madison River Communications, LLC. Included in those comments was a serious concern with BellSouth's "win-back" policies. In its Comments filed on March 4, 2002, Mpower did not renew these comments, in part because the nature of the "win-back" activities has changed somewhat. Mpower noted, however, that there was some discussion of the Georgia "win-back" proceedings in a BellSouth Ex Parte, filed March 14, 2002, in

response to questions by the Common Carrier Bureau representatives on February 27, 2002. As a result, Mpower believes its more recent experience with BellSouth “win-back” methods might be of particular value to the Commission.

## **II. Most Recent Incarnation of BellSouth “Win-Back” Methods – Checklist Item II**

BellSouth has allegedly separated its retail and wholesale operations to reduce the crossover of wholesale information to the retail side and thus reduce claims of improper “win-backs.” In fact, however, BellSouth uses various continuing errors in its OSS database to require Mpower customers or prospective customers to call BellSouth’s retail operations to attempt to get the erroneous entries corrected. When they do call, they are subjected to aggressive retention or “win-back” efforts, to get them to stay with BellSouth.

Further, if the errors are not corrected, BellSouth claims that they cannot transfer the customer. Not infrequently, customers who wish to transfer their service to Mpower have been required by BellSouth to call its retail operations numerous times. Nevertheless, sometimes the errors are never corrected and BellSouth retains the customer entirely as a result of this process.

Other times, the errors are eventually corrected but Mpower’s customers or prospective customers have been delayed, hassled and subjected to inappropriate customer retention efforts, based upon what is actually wholesale information. If the wholesale side of the business handled these requests for transfers properly, by making any needed technical changes, there would be no problem. Instead, BellSouth wholesale

has been instructed to require that Mpower's customers or prospective customers call BellSouth's retail operations to correct OSS errors prior to transfer.

Despite requiring the CLEC's customers to call BellSouth's retail services section to resolve the problem, there does not seem to be any consistent process and the results are very uneven. Some representatives promise to make the change but do not do so, while others claim they cannot make the change and send the customer back to Mpower to deal with the wholesale services section. In either event, any solution comes, if at all, only after much time has passed and several telephone calls have been made. This is inexcusable.

It is also significant that these errors are usually electronic coding or record information that the customer may be totally unaware of and which is not directly connected with any service they have or desire. Typically, there is coding on the line which indicates that the customer has ADSL service, although they do not. Perhaps they once called the BellSouth business office to inquire about such service but didn't take the service or perhaps they had ADSL at some point but cancelled their service and are no longer being billed for it.

Sometimes, the customer has requested that BellSouth move an ADSL service from one line, e.g. a "pilot" or "main" line, to another, perhaps to a fax line or other stand alone line, so they can leave that line with BellSouth but port their other lines. For making such a change, the Mpower customer is charged \$250 by BellSouth and may decide not to make the transfer to Mpower. If the customer decides to proceed, BellSouth may eventually transfer the service but still often fails to remove the code from the customer's records.

Yet another version of this problem is when the customer or prospective customer has had service with a BellSouth reseller. In this scenario, BellSouth and its resellers have faulty lines of communication with each other. When the customer or prospective customer calls the BellSouth reseller, the reseller gives the customer the “run around” and/or tells the customer to call BellSouth. BellSouth, in turn, tells the customer seeking to transfer its service to call the reseller. The customer service records (“CSRs”) do not get corrected and the customer is effectively unable to transfer its service away from the BellSouth reseller.

Mpower sales and management personnel in Florida and Georgia estimate that as many as 25% of all orders are delayed or derailed in this manner. At this time, Mpower has 162 lines being held in one location as a result of these on-going problems.

### **III. Customer Retention Efforts Violate 47 USC 222(b)**

The customer privacy statute, 47 USC 222, provides, at 222(b), as follows:

A telecommunications carrier that receives or obtains proprietary information from another carrier for purposes of providing any telecommunications service shall use such information only for such purpose, and shall not use such information for its own marketing efforts.

Were BellSouth to use its wholesale services section to complete corrections to OSS entries which allegedly must be corrected prior to the transfer of service to a CLEC, its OSS-related customer retention efforts would be a direct violation of this statute. Consequently, BellSouth refuses to correct the entries and transfer the lines until the CLEC’s customer or prospective customer calls their retail services section. BellSouth apparently feels that by making this requirement, they can justify using the very same information to trigger aggressive customer retention efforts.



The FCC has dealt quite specifically with the use of such information in its *Order on Reconsideration*, in Dockets 96-115 & 96-149, ¶¶ 76-77. The Commission stated, in part, as follows:

[S]ection 222 does not allow carriers to use CPNI to retain soon-to-be former customers where the carrier gained notice of customer's imminent cancellation of service through the provision of carrier-to-carrier service. We conclude that competition is harmed if any carrier uses carrier-to-carrier information, such as switch or PIC orders, to trigger retention marketing campaigns, and consequently prohibit such actions accordingly.

\* \* \*

Thus, where a carrier exploits advance notice of a customer change by virtue of its status as the underlying network-facilities or service provider to market to that customer, it does so in violation of section 222(b). (Emphasis added.)

This language clearly prohibits the use of information obtained on account of a proposed customer switch to market to or otherwise retain the customer. BellSouth regularly continues to do both. It uses proprietary line coding and customer service records, called to their attention because of errors which allegedly must be rectified prior to a customer switching to another carrier, to preclude a customer from switching or to provide an opportunity for its retail services personnel to market aggressively to that “soon-to-be former” customer.

Requiring a wholesale carrier's customer to call the retail service personnel to correct inaccurate records prior to a transfer to another carrier, however, clearly does not comply with the requirements in ¶ 78 of the Commission order, referenced above, which allows a carrier to attempt to retain the customer when “the carrier has independently learned from its retail operations that a customer is switching to another carrier.” (Emphasis added.) The behavior detailed above is merely another permutation of BellSouth's efforts to use wholesale carrier information for illegal retention and “win-back” efforts and must not be tolerated.

**IV. Inaccurate Wholesale Billing & Failure to Provide Billing Quality Assurance Program – Checklist Item II**

Mpower explained in some detail in its initial comments the nature and extent of continuing BellSouth failures to provide accurate and timely wholesale bills, in violation of Checklist Item II. A potential solution is actually provided for in Mpower's interconnection agreement with BellSouth and Mpower would very much like to implement the "billing quality assurance" plan provided for. To achieve this end, Mpower has repeatedly asked to move forward on such a plan, as provided for in §2 of Attachment 7 of its interconnection agreement. Section 2.1 provides that: "Upon request BellSouth and Mpower will agree upon a billing quality assurance program for all billing elements covered in this Agreement that will eliminate the need for post-billing reconciliation." The rest of §2 goes on to outline the major elements in such a program.

This is a potentially superior approach, which could save Mpower an inordinate amount of time and money. BellSouth has offered it in the interconnection agreement and Mpower has agreed. Mpower has also been requesting BellSouth to move forward since prior to December of 2001. It has written letters requesting to move forward (12/13/01); it has sent e-mails outlining the features which should be included (12/19/01); it has sent reminder requests and e-mail (1/16/02; 3/15/02).

In fact, on March 20, 2002, Mpower finally did receive a letter stating that BellSouth intends to set up a conference call between Mpower and BellSouth to discuss the process. Mpower is certainly hopeful that the promise of initial discussions will lead to measurable progress within a reasonable period of time. It is concerned, however, since it has taken more than three months of requests and initiatives on the part of

Mpower even to get the promise of a call to discuss the issue. Unfortunately, Mpower has previously had many, many promises from BellSouth, on other issues. Seldom, however, has it had significant action taken within a reasonable period of time.

In this instance, the promise of a conference call was sent one day before the Department of Justice recommendation on this BellSouth 271 filing. Mpower fears that if BellSouth is granted its 271 authority for Georgia, this and the many other issues cited in Mpower's initial and Reply Comments will not be solved. Once the limited leverage represented by the 271 process is removed, it will be necessary to have some very strong anti-backsliding measures in place. Such measures have not yet been put in place.

#### **V. Conclusions**

Mpower outlined numerous outstanding issues with BellSouth in Mpower's initial comments, filed March 4, 2002, in this docket. In these Reply Comments, Mpower has also outlined OSS-related "win-back" and retention issues and BellSouth's failure to make progress on a billing assurance program to eliminate its long-standing failure to provide accurate and timely wholesale bills. As a result of these many serious issues, Mpower does not believe BellSouth meets the requirements of §271 of the statute.

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Consequently, Mpower believes BellSouth should not be granted 271 authority in Georgia, at this time.

Respectfully submitted,

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